

IN THE MATTER OF	:	BEFORE THE
PENTECOSTAL CHURCH OF GOD	:	HOWARD COUNTY
INTERNATIONAL MOVEMENT IN	:	BOARD OF APPEALS
SPANISH	:	
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 06-015C

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DECISION AND ORDER

On June 26, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Pentecostal Church of God International Movement in Spanish, Petitioner, for a conditional use for a structure used primarily for religious activities to be located in an R-SC (Residential – Single Cluster) Zoning District, filed pursuant to Section 131.N.38 of the Howard County Zoning Regulations (the “Zoning Regulations”).

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Ronald Schimel, Esquire, represented the Petitioner. Brian Collins and Pastor Jose Ocasio testified in support of the petition. George A. Ford and Vince Orlando testified in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The subject property, known as 10689 Owen Brown Road, is located in the 5th Election District on the southeast corner of Owen Brown Road and Cedar Lane in Columbia (the “Property”). The Property is referenced on Tax Map 35, Grid 18 as Parcels 207 and 238.

2. The Property consists of two adjacent rectangular parcels consisting of a combined 6.7 acres. The Property is about 390 feet wide 822 feet deep. The Property is generally level with a moderate slope down to the south.

The Property is improved with a 6,486 square foot, 150-seat church building located in the northeast portion of the Property about 38 feet from Owen Brown Road and 88 feet from the east side lot line. A paved parking area is located south of the church building and abuts the east lot line. A small open lawn area is situated south of the parking lot. The remainder of the Property is heavily wooded. A stream and associated wetlands run through the western and southern portions of the Property. The Property is accessed from Owen Brown Road via an asphalt driveway that begins in the northeast corner of the Property.

3. Vicinal properties include:

(a) To the north of the Property across Owen Brown Road are NT-zoned lots containing single-family detached dwellings.

(b) To the east and southeast of the Property is an elderly housing development of attached dwellings that was approved in BA Case No. 98-20E.

(c) To the south of the Property is Parcel 137, which is improved with a single-family detached dwelling fronting on Freetown Road. Across Freetown Road to the south is the Hickory Ridge Village Center.

(d) To the west of the Property are Parcels 108 and 109, which are zoned R-SC and are generally wooded.

4. The Petitioner¹ proposes to construct a new 20,000 square foot church building approximately in the center of the Property. The new church building will be in addition to the existing church and will contain 200 seats in the main assembly area. The new church will be 34 feet in height and will be situated about 79 feet from the east side lot line, 184 feet from the west side lot line, and 400 feet from Owen Brown Road. The total building lot coverage after construction of the new building will be 8.9% of the Property.

The Petitioner also proposes to expand the existing parking area behind the existing church and install additional parking along the west side of the existing church building, resulting in a total of 117 parking spaces to serve both facilities. The existing driveway will provide access to Owen Brown Road. When completed, the parking lot will be located about 52 feet from the east side lot line and 150 feet from the west side lot line.

A stormwater management facility will be located south of the proposed church building. The remainder of the Property will remain wooded. The petition proposes that new landscaping will be installed along the front and east perimeters of the Property.

5. The Petitioner proposes to use the new church building for worship services, social events, meetings, and related functions. Religious services will be held on Sundays afternoons. No outdoor activities are proposed.

6. The 2000 General Plan designates the Property as a “Residential” land use. The Property is currently served by public water and sewer facilities. Owen Brown Road is a major collector with 35 feet of paving within a variable width right-of-way. The posted speed limit is 35 mph. Visibility from the proposed driveway is about 300 feet to the west and 800 feet to the east.

¹ The Property is not owned by Pentecostal Church, but by Abiding Savior Lutheran Church, which has consented to the petition.

7. Mr. Collins, a landscape architect and land planner, testified that the existing entrance drive will be widened. He stated that a refuse collection area will be located at the west side of the parking lot and will be screened. The landscaping along the east side lot line will be Type “D” and “E.”

8. Pastor Ocasio testified that, for the past 12 years, Pentecostal Church has shared the existing facility with the present owner of the Property, Abiding Savior Lutheran Church, which holds its services on Sunday mornings at 9:00 a.m. Because the services are staggered, no conflicts have arisen. He stated that generally Sunday school begins at 2:00 p.m. and services are held at 3:00 p.m. There are currently about 120 members of the congregation. Weekday evening meetings include Bible studies, choir rehearsals, and other administrative, religious and social meetings of generally no more than 80 people.

9. Mr. Ford testified on behalf of the Hickory Crest Townhome Condominium Association, Inc., which consists of 88 elderly housing homes to the east of the Property. He stated that the community currently experiences storm water drainage problems because stormwater and mud overflows from the east side of the church parking lot into the community’s storm sewer. They are also concerned that the proposed stormwater pond may be too close to the property line and could overflow or breed mosquitoes. He stated that the view of the parking lot should be screened by landscaping. He expressed the community’s concern that the new building may be too large.

10. In rebuttal, Mr. Collins stated that the Petitioner will attempt to move the stormwater pond as far west as allowable and to screen the pond from the view of the Hickory Crest community.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B).

A. General Plan. The Howard County General Plan designates the area in which the Property is located as a “Residential” land use. Church facilities are commonly found in residential areas and are presumptively considered compatible with residential land uses. The Petitioner’s proposed use, while larger than some, is not atypical of religious facilities. The intensity of the use, which will primarily involve two services on Sundays and regular meetings on weeknights, is moderate given the 6.7-acre site. The Property is located on a major collector which will not likely be overly affected by the use. Accordingly, the nature and intensity of operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a.

B. Adverse Effect: Section 131.B.2 of the Zoning Regulations requires me to determine whether the proposed use at the Property will have adverse effects on vicinal properties above and beyond those ordinarily associated with such use. Virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed religious facility has adverse effects in the R-SC zone. The proper question is whether those adverse effects are greater at the proposed site than they would be generally elsewhere within the R-SC district.

For the reasons stated below, and subject to certain conditions, I find that the Petitioner has met its burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with a structure used primarily for religious activities in the R-SC district:

1. Physical Conditions. The Petitioner's religious facility consists of typical religious and social activities that will take place only on weeknights and weekend days. Activities will be primarily indoors. While most noise generated by the activities will be attenuated by distance and landscaping, the proposed use will no doubt result in some noise from traffic and parking lot conversation. Such activities are typical and therefore are an adverse effect that is inherent in a religious facility use. Accordingly, I find that noise generated by these activities will not be greater than that ordinarily associated with a church use.

While the neighbors expressed concern that the current configuration of the church parking lot causes undue stormwater runoff onto the adjoining community, this adverse effect should be adequately mitigated by an increase in the setback of the parking lot to 52 feet and the installation of heavy landscape buffering along the east Property line.

With respect to the stormwater pond, if it is located as far west as allowable and screened from the view of the Hickory Crest community, it will not create an inordinate adverse effect.

Consequently, I find that proposed use will not generate excessive noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with a religious facility in the R-SC zoning district, as required by Section 131.B.2.a.

2. Structures and Landscaping. The Petitioner proposes to construct a 20,000 square foot, 34' tall church building that is in addition to the existing 6,486 square foot church building on the Property. While large, the resulting structures will cover only about 8.9% of the 6.7-acre

Property, which is not atypical of religious facilities. What's more, the new church building will be centrally located and well screened from vicinal properties. Type "D" (Screen) landscaping will be installed along the east perimeter of the Property adjacent to the homes in the Hickory Crest community. In addition, the existing building and woods will adequately screen the new building from all other vicinal properties. Consequently, the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in compliance with Section 131.B.2.b of the Zoning Regulations.

3. Parking and Drives. The petitioner will provide the required minimum number of parking spaces for a religious facility with 350 seats, which is 117 parking spaces. As proposed, the parking areas will be in the rear and west side of the existing building. The parking will be set back at least 52 feet from the east side lot line and screened from the Hickory Crest community by Type "E" landscaping.

A screened refuse collection area will be located along the west side of the parking lot away from vicinal properties. Consequently, the parking areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Section 131.B.2.c.

4. Safe Access. The Petitioner proposes to use and widen the existing driveway for access. Visibility from the proposed driveway is about 300 feet to the west and 800 feet to the east. Consequently, I find that the ingress and egress drives will provide safe access with adequate sight distance based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate, in accordance with section 131.B.2.d.

II. Specific Criteria for Structures Used Primarily for Religious Activities (Section 131.N.38).

1. The lot coverage is about 8.9%, which does not exceed the 25% maximum lot coverage allowed by Section 131.N.38.a.

2. The maximum height allowed in the R-SC district is 34 feet; the proposed addition will be 34 feet tall. Consequently, the petition complies with Section 131.N.38.b.

ORDER

Based upon the foregoing, it is this **8th day of August 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Pentecostal Church of God International Movement in Spanish for a conditional use for a structure used primarily for religious activities to be located in an R-SC (Residential – Single Cluster) Zoning District is hereby **GRANTED**;

Provided, however, that the conditional use will apply only to the uses and structures as described in the petition and conditional use plan submitted and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.